

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM No.2509-C of 2009 and
RSA No.1046 of 2007
Date Of Decision: 14.05.2009

Jeeta and others

. . . . Appellants

VS.

Sube Singh @ Sabu and another

. . . . Respondents

CORAM : HON'BLE MR.JUSTICE RAKESH KUMAR GARG

Present: Mr. Vivek Khatri, Advocate
for the appellants

RAKESH KUMAR GARG J.(ORAL)

CM No.2509-C of 2009

After hearing learned counsel for the applicant, the order dated 5.2.2009 dismissing the appeal in default is recalled and the appeal is restored to its original number.

CM disposed of.

RSA No.1046 of 2007

It is defendants' second appeal challenging the judgement and decree of the Courts below whereby suit of the plaintiff-respondents qua the possession of suit land has been decreed.

As per the averments made in the plaint, the plaintiffs are co-owners in possession of the land comprised in Khasra No.25/11 and 26/15. The aforesaid land of the plaintiffs is adjacent to the land of the defendants and taking undue advantage of the absence of the plaintiffs, they encroached upon the same forcibly and illegally.

The suit was resisted by the defendants denying the ownership as well as possession of the plaintiffs over the suit land. It was further alleged that the defendants were in possession of their own land.

On the basis of the evidence produced on record the trial court held that defendants had encroached upon the land of the plaintiffs bearing Khasra No.25/11 and 26/15 of Khewat No.88 to the extent of 12 marlas and decreed the suit.

Aggrieved from the aforesaid decree, the defendants filed an appeal raising the argument that report of the revenue officials Exh. PW5/A relied upon by the trial court was erroneous as the appellants were not present at the time of demarcation. The lower Appellate Court with the consent of the parties appointed another Local Commissioner vide order dated 22.12.2006 to demarcate the land in question. The aforesaid Local Commissioner demarcated the land in question and submitted his report according to which defendants/appellants were found to be in unauthorized occupation of land measuring 10 marlas out of Khasra No.25/11 and 26/15 belonging to the plaintiffs-respondents. Thus the decree of the Trial court was modified to this extent.

Still not satisfied, the appellants/defendants have filed the instant appeal challenging the judgment and order of the Courts below.

The only contention raised by the learned counsel for the appellant is that the demarcation report submitted by the Local Commissioner appointed by the First Appellate Court is not in accordance with the law and moreover his objections to this report which were raised before the lower Appellate Court were not discussed.

A perusal of the judgment of lower Appellate Court would show that the Local Commissioner was appointed by the Court and the Local Commissioner demarcated the land in dispute in the presence of both the parties and other dignitaries of the village. He also demarcated the suit land by affixing three pucca points which were available at the site. I have also perused the Local Commissioner's report which finds mention that the Local Commission found three pucca points existing and thereafter he demarcated the land in dispute. Moreover, the question whether the appellant has encroached upon the land or not is a question of fact. Courts below on the appreciation of evidence have recorded the fact in this regard against the appellant.

No other point has been urged. No substantial question of law arises.

Thus, I find no merit in this case. Dismissed.

MAY 14, 2009
shonkar

(RAKESH KUMAR GARG)
JUDGE